



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Docket No. FAA-2020-0862

COVID-19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Summer 2021 Scheduling Season

AGENCY: Department of Transportation (DOT), Federal Aviation Administration (FAA).

ACTION: Notice of proposed extension of a limited, conditional waiver of the minimum slot usage requirement.

SUMMARY: Due to ongoing coronavirus disease 2019 (COVID-19)-related impacts on demand for air travel, the FAA seeks comment on providing additional relief at slot-controlled and designated International Air Transport Association (IATA) Level 2 airports in the United States with regard to the Summer 2021 scheduling season ending on October 30, 2021. Two options are presented for comment: continuation of the existing relief that the FAA has provided at these airports through March 27, 2021, on the same terms currently in effect; and a proposal by the Worldwide Airport Slot Board (WASB), which includes representatives of IATA, the Airports Council International-World (ACI World), and the Worldwide Airport Coordinators Group (WWACG). The FAA invites comment on these two different approaches for the Summer 2021 scheduling season and anticipates subsequently providing notice of its final decision. Commenters may also propose different or additional options for relief. The FAA further invites comment on whether the proposal adopted by the FAA should make relief available for the full duration of the Summer 2021 scheduling season, which ends on October 30, 2021.

DATES: Submit comments on or before [INSERT DATE 7 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001; telephone: (800) 647-5527, or (202) 366-9826. You must identify FAA Docket Number FAA-2020-0862 at the beginning of your comments. You may also submit comments through the Internet at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Bonnie Dragotto, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; telephone: (202) 267-3808; e-mail: bonnie.dragotto@faa.gov.

SUPPLEMENTARY INFORMATION:

Current Slot Usage and Related Relief Due to COVID-19

In a notice published in the Federal Register on October 7, 2020 (85 FR 63335),¹ the FAA made available to slot holders at John F. Kennedy International Airport (JFK), New York LaGuardia Airport (LGA), and Ronald Reagan Washington National Airport (DCA) a waiver from the minimum slot usage requirements due to continuing COVID-19 impacts through March 27, 2021,² subject to each of the following conditions:

- (1) All slots not intended to be operated must be returned at least four weeks prior to the date of the FAA-approved operation to allow other carriers an opportunity to operate these slots on an *ad hoc* basis without historic precedence.
- (2) The waiver does not apply to slots newly allocated for initial use during the Winter 2020/2021 season. New allocations meeting minimum usage requirements remain

¹ The FAA has authority for developing “plans and policy for the use of the navigable airspace and for assigning “by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.” 49 U.S.C. § 40103(b)(1). The FAA manages slot usage requirements under the authority of 14 CFR § 93.227 at DCA and under the authority of Orders at JFK and LGA. *See* Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 58255 (Sep. 18, 2020).

² Although DCA and LGA are not designated as IATA Level 3 slot-controlled airports given that these airports primarily serve domestic destinations, the FAA limits operations at these airports via rules at DCA and an Order at LGA that are equivalent to IATA Level 3. *See* FN 1. The FAA reiterates that the relief provided in the March 16, 2020, notice (85 FR 15018), the April 17, 2020, notice (85 FR 21500), and the October 7, 2020, notice (85 FR 63335), extends to all allocated slots, including slots allocated by exemption. As proposed in this notice, either option would similarly apply to all allocated slots, including slots allocated by exemption.

eligible for historic precedence. The waiver does not apply to historic in-kind slots within any 30-minute or 60-minute time period, as applicable, in which a carrier seeks and obtains a similar new allocation (*i.e.*, arrival or departure, air carrier or commuter, if applicable).

- (3) The waiver does not apply to slots newly transferred on an uneven basis (*i.e.*, via one-way slot transaction/lease) after October 15, 2020, for the duration of the transfer.

Slots transferred prior to this date may benefit from the waiver if all other conditions are met. Slots granted historic precedence for subsequent seasons based on this relief are not eligible for transfer if the slot holder ceases all operations at the airport.

Additionally, an exception may be granted and the waiver therefore applied, if a government's official action (*e.g.*, travel prohibition or other restriction due to COVID-19), prevents the operation of a flight on a particular route that a carrier otherwise intended to operate. This exception is being administered by the FAA in coordination with the Office of the Secretary of Transportation (OST). This exception applies under extraordinary circumstances only in which a carrier is able to demonstrate an inability to operate a particular flight or comply with the conditions of the proposed waiver due to an official governmental prohibition or restriction.

In addition, at designated IATA Level 2 U.S. airports—Chicago O'Hare International Airport (ORD), Newark Liberty International Airport (EWR), Los Angeles International Airport (LAX), and San Francisco International Airport (SFO)—the FAA determined to extend through March 27, 2021 its policy for prioritizing flights canceled due to COVID-19 for purposes of establishing a carrier's operational baseline in the next corresponding season, subject to the following conditions:

- (1) All schedules as initially submitted by carriers and approved by the FAA and not intended to be operated must be returned at least four weeks prior to the date of the FAA-

approved operation to allow other carriers an opportunity to operate these times on an *ad hoc* basis without historic precedence.

- (2) The priority for FAA schedules approved for Winter 2020/2021 does not apply to net-newly approved operations for initial use during the Winter 2020/2021 season. New approved times would remain eligible for priority consideration in Winter 2021/2022 if actually operated in Winter 2020/2021 according to established processes.

Consistent with the policy for slot-controlled airports, limited exceptions may be granted from either or both of these conditions at Level 2 airports under extraordinary circumstances if a government's official action (*e.g.*, travel prohibition or other restriction due to COVID-19), prevents the operation of a flight on a particular route that a carrier otherwise intended to operate. This exception applies under extraordinary circumstances only in which a carrier is able to demonstrate an inability to operate a particular flight or comply with the conditions of the proposed waiver due to an official governmental prohibition or restriction. If the exception is determined not to apply, carriers are expected to meet the conditions for relief or operate consistent with standard expectations for the Level 2 environment. This limited, conditional relief remains available through March 27, 2021.

Current COVID-19 Situation

Since the FAA's October 7, 2020 notice was published, COVID-19 has continued to cause disruption globally and within the United States. The World Health Organization (WHO) reports COVID-19 cases in more than 200 countries, areas, and territories worldwide. For the week ending December 13, 2020, the WHO reported approximately 4.3 million new COVID-19 cases and over 75,000 new deaths, bringing the cumulative total to 70.5 million reported COVID-19 cases and 1.6 million deaths globally since the start of the public health emergency.³

³ COVID-19 weekly epidemiological update, December 15, 2020, available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports> *See also* <https://covid19.who.int/> [for WHO COVID-19 Dashboard with the most current number of cases reported.](#)

International travel advisories issued by the U.S. Department of State's Global Health Advisory remain in effect worldwide, including designations of either Level 3—Reconsider Travel or Level 4—Do Not Travel for more than 175 destinations.⁴ The U.S. Department of State advises that challenges to any international travel at this time may include mandatory quarantines, travel restrictions, and closed borders. The U.S. Department of State notes further that foreign governments may implement restrictions with little notice, even in destinations that were previously low risk.⁵ Accordingly, the U.S. Department of State warns Americans choosing to travel internationally that their trip may be disrupted severely and it may be difficult to arrange travel back to the United States.⁶

Moreover, international travel recommendations from the Centers for Disease Control and Prevention (CDC) categorize nearly 175 countries, areas, and territories worldwide under Level 4—COVID-19 Risk Is Very High.⁷ Within the United States, the CDC reported 16,756,581 total cases and 306,427 deaths from COVID-19 as of December 17, 2020, with 1,485,010 new cases in the prior seven days.⁸ The CDC advises prospective domestic travelers to consider whether their destination has requirements or restrictions for travelers, and notes that State, local, and territorial governments may have travel restrictions in place, including testing requirements, stay-at-home orders, and quarantine requirements upon arrival. A national emergency related to COVID-19 remains in effect pursuant to the President's March 13, 2020 Proclamation.⁹

⁴ <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/>

⁵ <https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-information.html>

⁶ *Id.*

⁷ <https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notice.html>

⁸ CDC COVID Data Tracker, updated October 2, 2020, available at https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#cases_casesinlast7days

⁹ <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

On May 15, 2020, the President announced the establishment of Operation Warp Speed (OWS), a national program to accelerate the development, manufacturing, and distribution of COVID-19 vaccines, therapeutics, and diagnostics.¹⁰ On December 11, 2020, the Food and Drug Administration (FDA) granted an emergency use authorization for a COVID-19 vaccine and phased distribution of that vaccine is now underway in the United States; FDA also is nearing potential authorization of a second vaccine.¹¹ Vaccine distribution also has begun on a limited basis elsewhere in the world.

Standard Applicable to This Waiver Proceeding

The FAA reiterates the standards applicable to petitions for waivers of the minimum slot usage requirements in effect at DCA, JFK, and LGA, as discussed in the FAA's initial decision extending relief due to COVID-19 impacts.¹²

At JFK and LGA, each slot must be used at least 80 percent of the time.¹³ Slots not meeting the minimum usage requirements will be withdrawn. The FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding air carrier and which affects carrier operations for a period of five consecutive days or more.¹⁴

¹⁰ <https://www.hhs.gov/about/news/2020/05/15/trump-administration-announces-framework-and-leadership-for-operation-warp-speed.html>

¹¹ <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines>

¹² See 85 FR 15018 (Mar. 16, 2020).

¹³ Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 47065 at 58255 (Sep. 18, 2020).

¹⁴ At JFK, historical rights to operating authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season. See JFK Order, 85 FR 58260. At LGA, any operating authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA. See LGA Order, 85 FR at 58257.

At DCA, any slot not used at least 80 percent of the time over a two-month period also will be recalled by the FAA.¹⁵ The FAA may waive this minimum usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding carrier and which exists for a period of nine or more days.¹⁶

When making decisions concerning historical rights to allocated slots, including whether to grant a waiver of the usage requirement, the FAA seeks to ensure the efficient use of valuable aviation infrastructure and maximize the benefits to airport users and the traveling public. This minimum usage requirement is expected to accommodate routine cancellations under all but the most unusual circumstances. Carriers proceed at risk if, at any time prior to a final decision, they make decisions in anticipation of the FAA granting a slot usage waiver.

Discussion of Proposals for Additional Relief

At the present time, COVID-19 continues to present a highly unusual and unpredictable condition that is beyond the control of carriers. According to data submitted by Airlines for America (A4A), passenger demand has weakened dramatically as a result of the recent COVID-19 resurgence and a return to 2019 passenger volumes is not expected until calendar year 2023 or 2024.¹⁷ The ultimate duration and severity of COVID-19 impacts on passenger demand in the United States and internationally remain unclear even as the distribution of a vaccine is underway in certain parts of the world.

Since the FAA's determination in October 2020 to extend relief on a conditional basis through March 27, 2021, the FAA has received submissions from stakeholders regarding whether the FAA should extend additional relief beyond March 27, 2021.¹⁸ The FAA seeks

¹⁵ See 14 CFR 93.227(a).

¹⁶ See 14 CFR 93.227(j).

¹⁷ See December 7, 2020 presentation by Airlines for America titled "Tracking the Impacts of COVID-19," a copy of which has been placed in the docket for this notice.

¹⁸ Copies of all submissions to the DOT and FAA concerning the continuation of COVID-related relief have been placed in the docket associated with this notice.

comment on two proposals with respect to continuing relief with regard to the Summer 2021 scheduling season, which ends on October 30, 2021. Commenters may also suggest other options for consideration. Absent further relief, the existing relief will expire on March 27, 2021 and standard requirements and policies will apply.

Extension of Current Relief Made Available by the FAA on a Conditional Basis

As one option for consideration, the FAA is proposing to extend through October 30, 2021, the COVID-19-related limited waiver of the minimum slot usage requirement at JFK, LGA, and DCA that the FAA has already made available on a conditional basis through March 27, 2021. As part of this option, the FAA would also extend through October 30, 2021 its COVID-19-related policy for prioritizing flights canceled or otherwise not operated as originally intended at designated IATA Level 2 airports in the United States on a conditional basis, for purposes of establishing a carrier's operational baseline in the next corresponding season (*i.e.*, Summer 2022). The proposed extension would be made available on the same terms announced in the FAA's October 7, 2020 decision (85 FR 63335), as summarized previously in this notice in the section titled *Current Slot Usage and Related Relief Due to COVID-19*.

As explained in the FAA's October 7, 2020 decision, the FAA believes the relief provided on a conditional basis through the end of the Winter 2020/2021 season at slot-controlled and designated IATA Level 2 airports in the United States addresses ongoing COVID-19-related impacts. The FAA continues to believe this approach provides carriers with flexibility during this unprecedented situation, supports the long-term viability of carrier operations at slot-controlled airports while also supporting economic recovery, and reduces the potential to suppress flight operations for which demand exists. The FAA believes an extension of the current waiver would also be generally consistent with the approach taken by other jurisdictions to date.

WASB Proposal

Another option for consideration is the WASB proposal. WASB is a forum for bringing together representatives from the airport, airline, and slot coordinator communities to develop positions on slot management rules and standards to be applied globally in the Worldwide Airport Slot Guidelines (WASG).¹⁹ The WASB proposal includes the following provisions, which are described herein as they would be applied in the United States:

- Slot holders that ensure the return of any slot as allocated by the FAA for the duration of the Summer 2021 season (identified by Slot ID and/or flight number, as appropriate) on or before February 8, 2021 (approximately 7 weeks before the start of the season) would retain historic precedence for that slot in the Summer 2022 scheduling season; newly allocated slots are not eligible for this provision; eligible slots returned before the deadline would be available for re-allocation on a non-permanent basis for operation during the Summer 2021 season; slots operated as approved on a non-historic basis in Summer 2021 would have priority over new demands for the same timings in the next equivalent season, subject to capacity availability and any other legal conditions;
- For slots not returned by February 8, 2021, the usual minimum slot usage threshold of 80 percent would be reduced to 50 percent during the Summer 2021 scheduling season; and,
- For slots not returned by February 8, 2021, an exception from the reduced slot usage threshold of 50 percent would be available under circumstances that may prevent airlines from operating scheduled flights for reasons other than commercial cancellations for the duration of the circumstance plus up to a 6-week recovery period; as proposed, the FAA would accept as valid justification for the non-utilization of slots, any government restrictions that prevent or severely restrict travel to specific airports, destinations (including intermediate points) or countries for which the slot was held, such as the following examples—

¹⁹ The detailed proposal can be accessed in the docket for this notice and at the following website: <https://www.iata.org/contentassets/37a569b171504493be1d2ddd7d53f1f2/wasb-recommendation-s21airportslotalleviation.pdf>

- Government travel restrictions based on nationality, closed borders, government advisories related to COVID-19 that warn against all but essential travel, or complete bans on flights from/to certain countries or geographic areas;
 - Severe government restrictions related to COVID-19 on the maximum number of arriving or departing passengers on a specific flight or through a specific airport;
 - Government restrictions on movement or quarantine/isolation measures within the country or region where the airport or destination (including intermediate points) is located;
 - Government-imposed closure of businesses essential to support aviation activities (e.g., closure of hotels); and
 - Unforeseeable restrictions on airline crew, including sudden bans on entry or crew stranded in unexpected locations due to quarantine measures.
- The following conditions would apply:
 - Relief would not apply to slots held by an airline that permanently ceases operations at the airport; and,
 - New uneven transfers would not be eligible for the pre-season return provision, but would be eligible for other slot relief measures during the Summer 2021 season.

The FAA notes that the WASB proposal is silent concerning a position on further relief for prioritizing flights canceled due to COVID-19 at designated IATA Level 2 airports. The FAA further notes that certain provisions and concepts of the detailed WASB proposal would not necessarily apply in the United States to the extent that there are established differences in effect under established rules and orders governing slot management in the United States. For example, traditional concepts of “series of slots” and provision 8.7.2.2 of the WASG have not been

adopted in the United States.²⁰ The FAA received written submissions from IATA, A4A, Delta Air Lines, Inc., and Virgin Atlantic Airways, Ltd. expressing support for FAA adoption of this proposal.

Additional Submission Regarding Relief Beyond March 27, 2021

In addition, the FAA has received an alternative proposal concerning relief beyond March 27, 2021 from Southwest Airlines Co., which takes no position on the WASB proposal relative to JFK, opposes the WASB proposal relative to DCA and LGA, and suggests extending the FAA's current relief at DCA and LGA for an additional half season at most, through June 27, 2021. This submission has been placed in the docket associated with this notice.

Invitation for Comment

The FAA seeks views and information regarding these or other proposals. The FAA further invites comment on whether the proposal adopted by the FAA should make relief available for the full duration of the Summer 2021 scheduling season, which ends on October 30, 2021. Written views and supporting data may be submitted no later than [INSERT DATE 7 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] to the docket associated with this notice as explained previously in this notice. Information submitted to the FAA may be subject to disclosure under the Freedom of Information Act.

The FAA recognizes that commenters may seek to submit business information that is both customarily and actually treated as confidential. Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted

²⁰ <https://www.iata.org/en/policy/slots/slot-guidelines/> The FAA reiterates that under current policy and procedures, the FAA continues to apply version 9 of the Worldwide Slot Guidelines (Jan. 1, 2019), a copy of which has been placed in the docket for this notice.

comments, or any relevant portions thereof, as CBI. Please mark each page of your submission containing CBI as "PROPIN." Comments containing PROPIN may be submitted by e-mail to the Air Traffic Organization Slot Administration Office at 9-FAA-Slot-Policy@faa.gov. The FAA will treat such marked submissions as confidential under FOIA, and will not place confidential content in the public docket for this notice. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this notice. The FAA will take the necessary steps to protect properly designated information to the extent allowable by law. All routine slot administration matters unrelated to this proceeding, including schedule updates, requested changes, and information requests, should continue to be submitted to 7-awa-slotadmin@faa.gov.

After receiving and reviewing comments, the FAA anticipates subsequently providing notice of its final decision.

Issued in Washington, DC on December 17, 2020.

Lorelei Dinges Peter
Assistant Chief Counsel for Regulations

Virginia T. Boyle
Acting Vice President, System Operations Services
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